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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 507

JUDITH JAVA, et al, *Appellees*,

vs.

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al, *Appellants*.

On appeal from the United States District Court for the Northern District of California

Motion For Leave To File Brief As Amicus Curiae And Brief Of The Attorney General Of The State of Colorado On Behalf Of The Division Of Employment, Department Of Labor And Employment Of The State Of Colorado In Support Of Appellants Appeal.

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Motion For Leave To File A Brief As Amicus Curiae And Brief Of The Attorney General Of The State Of Colorado On Behalf Of The Division Of Employment, Department Of Labor And Employment Of The State Of Colorado In Support Of Appellants Appeal.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Attorney General, acting for the Division of Employment, Department of Labor and Employment, of the State of Colorado, respectfully moves the Court for permission to file this brief as Amicus Curiae.

INTEREST OF THE AMICUS CURIAE

The Honorable Duke W. Dunbar, Attorney General of the State of Colorado, is the chief legal advisor of all state agencies and is vitally concerned with the proper enforcement of all court decisions affecting the proper and legal administration of such agencies.

The Division of Employment of the Department of Labor and Employment of the State of Colorado is charged with the responsibility and authority to administer the Colorado Employment Security Act, Chapter 82 of the Colorado Revised Statutes 1963 as amended, and will be intimately affected in such administration by the Court's decision in this matter.

The Attorney General is fearful that the decision of the U. S. District Court in this matter, if affirmed, may lead to the following results:

1. A self-defeating and actual delay in payment of unemployment compensation benefits under the Colorado Employment Security Act.

2. Great confusion and disorderly processing of unemployment compensation benefits in Colorado.

3. Greatly increased administrative expense resulting in increased and unjustified taxation upon Colorado employers.

4. Possible invalidation of the Secretary of Labor's certification of Colorado conformity with the Social Security Act, 42 U.S.C. § 503, depriving the state of the benefits of the federal statute.

5. Judicial destruction of the "fault" principle in unemployment compensation programs, greatly increasing the already onerous tax load of the state and its citizens.

Unless otherwise designated herein, all references to "Sections" are references to the Colorado Employment Security Act, Chapter 82 Colorado Revised Statutes as amended, herein called the "Colorado Act" and the statutory language is appended hereto as indicated.

ARGUMENT

I

COLORADO'S EMPLOYMENT SECURITY ACT HAS DIFFERENT LANGUAGE THAN CALIFORNIA'S BUT THE STATUTORY INTENT AND THE PROCEDURES ARE SIMILAR.

Section 82-5-1 of the Colorado Act (Appendix "A") provides for filing of claims as prescribed by Regulations, which in turn provide for filing by mail in certain cases where claimant resides over 20 miles from a local employment office. Once claimant's "*qualifications*" for benefits is determined (i.e. the facts of separation from employment qualifying him for benefits) he must maintain his *eligibility* for benefits. Thus, he must report in person each week and *each week is in effect a separate claim.* (Regulation 7A, Appendix "B"). The *weekly* reporting requirement in unemployment claims is for the express statutory purpose of assuring that claimant is able and available for work and conducting a search for work and that he is not reemployed. *Thus, his eligibility for benefits becomes a weekly determination by the administrative agency.* Could it be possible, under the lower court's rul-

ing, that ultimately, *weekly evidentiary hearings* must be held to determine claimant's eligibility? Obviously, such a *legal clutter* would destroy the very ends sought by the beneficent purposes of unemployment compensation statutes.

Section 82-5-2 of the Colorado Act (*Appendix "A"*) provides for a deputy to "promptly notify the claimant and *any other interested parties of the decision.*" (emphasis added).[1]

The section goes on to give the deputy authority to reconsider his decision for good cause and provides for 11 days in which an interested party or the claimant may appeal from such decision. If such appeal is *not* made, *"such decision shall be final and benefits shall be paid or denied* in accordance therewith." (emphasis added). If an appeal is filed, then notice of same goes out and a referee's hearing is scheduled (*Section* 82-5-4 *Appendix "A"*). Then follows the most important sentence: *"Benefits with respect to the period prior to the final determination of the department shall be paid only after such determination."*

Section 82-5-4 (*Appendix "A"*) on appeals further provides that if there is a referee's hearing, and no appeal from the referee's decision, this latter decision *"shall be deemed to be the final deciison of the division."*

It is also to be noted that the Division can make a redetermination where there has been an error in computation, newly discovered wages, or *the amount of bene-*

[1] An "interested party" under the Colorado act includes any employer who has complied with the reporting requirements of the division with respect to wages or other information regarding such individual." Section 82-1-3 (12), (emphasis added). (Appendix "C")

fits has been fixed on the basis of misrepresentation of fact. Section 82-5-3 (*Appendix "A"*)"

Section 82-5-2 (2)(*Appendix "A"*) in the last sentence provides for the so-called "double affirmation" payment which most state acts have: That is, if any two "decision makers" (deputy, referee or the Industrial Commission), in sequence affirm an award, the same shall be paid *regardless of the final appeal outcome,* the only basic question then remaining being *whether or not the particular employer's account shall be charged.*

This recitation of the Colorado Act's provisions is made for the purpose of showing the statutory intent, inherent in the language, that *benefits shall be paid only after appeal,* except for the double affirmation provision.

Thus, while Colorado language varies from the California language, the *statutory* time for payment is clear, and the statutory "problem" is the same as here at issue.

Nevertheless, Colorado does *in fact* pay some claimants prior to the "due date" under the statute. This occurs primarily in three circumstances: 1) when the protest of employer is late, and payments have begun, but the "protest" raises substantial questions as to misrepresentations of fact, making a redetermination necessary; 2) when the protest contains inadequate information requiring further inquiry of both the claimant and employer and the employer response must be by mail from its out-of-state central office — in this type of case, delay in receiving responses may work a hardship on a claimant where the protest appears insubstantial, so payments are made to claimant pending substantiation of the protest statements; 3) where the initial computation of benefit

rights has been delayed by a division investigation as to employer coverage, amounts earned, or facts of separation, which may take two to four weeks; because of hardship to claimant, the accumulated benefits may then be paid without awaiting the eleven day protest period by employer.

In all cases, however, where a redetermination is necessary or where the protest responses become "substantial", payments are stopped and if the deputy determines a No Award, refund is "demanded". It is to be noted that, 1) the "demand" is vitiated when "double affirmation" occurs; 2) the "demand" is vitiated when a timely appeal is made, and 3) no collection effort is made since a deduction against future benefits will be made if no refund occurs.

The issues raised by the instant case relevant to Colorado procedures can thus be phrased in the following questions:

I. IS THE STATUTORY LANGUAGE UNCONSTITUTIONAL AS A DENIAL OF DUE PROCESS?

II. ARE THE ACTUAL PROCEDURES IN THE FEW INSTANCES WHERE PAYMENTS ARE COMMENCED AND THEN STOPPED (FOR REDETERMINATIONS) UNCONSTITUTIONAL AS A DENIAL OF DUE PROCESS?

III. INVERSELY, IS THE DIVISION IN VIOLATION OF THE COLORADO ACT WHEN IT PAYS CLAIMANT PRIOR TO "FINAL DETERMINATION"?

IV. WOULD NOT EMPLOYERS HAVE GOOD CAUSE TO ENJOIN DEPLETION OF THE FUND PRIOR TO FINAL DETERMINATION AS DEFINED BY THE ACT?

The Colorado Act has been certified by the Secretary of Labor as in conformity with the federal statute. If "when due" is to be changed by judicial decision in the name of due process, definitive guidelines should be established. The Colorado case of *Anderson vs. Industrial Commission* now before the *Colorado Court of Appeals* (*No.* 70-448) amply illustrates the problem and is therefore discussed at length below. What is "when due" *on the second week's claim, the third week's claim, the fourth* etc?

Appeals procedures in unemployment compensation cases should be simple, prompt and non-legalistic. *Rafferty v. State of New Hampshire Department of Employment,* 107 N.H. 387, 222 A 2nd 823 (1966).

II

EMPLOYERS AS A CLASS ARE PROPER AND NECESSARY PARTIES TO ANY PROCEEDING AFFECTING UNEMPLOYMENT COMPENSATION FUNDS AND THE RATE OF TAX.

Under the Colorado Act as under most state employment security acts, the employer involved, whether one or more (there may be several employers during a base period for determination of wage credits), are "interested parties" *Section* 82-1-3 (12) (*Appendix "C"*) and *Section* 82-5-2 (*Appendix "A"*). They therefore are entitled to

and receive notice of a claim filed by an ex-employee. They may protest, appeal, and appear. If they do so, they have standing throughout the proceedings including court review. Normally, the employer response to the first inquiry by the Division is in writing, while the worker has appeared before the Division in person (see Argument I). The employer's first personal appearance, if any, is at the referee's hearing where the claimant also appears. Such a hearing is in the nature of a trial de novo where all the evidence relative to the claim is presented, witnesses are confronted and cross-examined and documents introduced into evidence. *Section* 82-5-4 (*Appendix "A"*); *Regulation No.* 20 (*Appendix "D"*); 81 *Corpus Juris Secundum* 331.

The employer has standing because (1) his taxes alone have established the fund, and (2) his experience rating (i.e. his tax rate) will be affected by the outcome. Under the Colorado Act, as under the California act, employers pay the contribution tax creating the fund from which the benefits are paid to employees who become unemployed through no fault of their own. Employers also pay the federal tax which is used primarily for administration of the fund. *Internal Revenue Code,* § 3301 *and* § 3302; *Social Security Act,* 42 *U.S.C.* § 502. Employees pay nothing and suffer no deduction from wages in establishment (or administration costs) of the fund.

Do not employers then, on a due process basis, have standing to resist any disbursement from the fund, (threatening their account and rate of tax) before an "evidentiary hearing"? Are the "equities" of the parties involved any different? Put another way, do the employers have "less position" because (1) they are *sole* con-

tributors to the fund, and (2) thus, obviously more "affluent"?

Employers as a class are indispensible parties to this proceeding and should have been joined, *Rule* 19, *F.R.C.P.* The device of asking for injunctive relief or declaratory judgment should not be used to avoid proper jointure of parties.

"The machinery of government would not work if it were not allowed a little play in its joints." *Justice Holmes* in *Bain Peanut Co. of Texas v. Pruson,* 181 U.S. 499, at 501. The *legalistic* approach by claimants here could well put a straight-jacket of formality around the flow of millions of dolars of unemployment compensation payments made every week in this country, and cripple the purpose of the whole program, which is to level out the economic dips affecting both individuals and the country's economy as a whole.

III.

COLORADO COURTS HAVE BEFORE THEM THE KIND OF CASE WHICH CONCERNED JUSTICE BLACK IN HIS DISSENT IN *GOLDBERG vs. KELLY,* 287 U.S. 254 (1970).

Now lodged in the Colorado Court of Appeals, and doubtless to be certified to the Colorado Supreme Court because of the constitutional question involved, is *Raymond William Anderson vs. Colorado Industrial Commission (Ex-officio Unemployment Compensation Commission of Colorado) and Ace Disposal Service Co., Inc., Colorado Court of Appeals* 70-448.

The facts of the case are these: Claimant quit his job with "Ace" to accept a job which under the Colorado Act could not be considered better, because it did not last 90 days. Claimant was denied benefits at the outset by the deputy and no benefits were ever paid to claimant. Nevertheless, claimant appeals, inter alia, on the pertinent ground that *claimant was denied due process because he was not granted an evidentiary hearing before the deputy in the first instance.* The claimant *did* go through the appropriate, statutorily provided administrative appeals after denials but lays his due process arguments squarely on the *Goldberg* decision. Administratively, a "no award" was affirmed throughout the administrative appeals.

In *Anderson* then, the factual situation is different from either *Goldberg* or *Java, only in that no payments were ever made.* Thus, the *Anderson* case presents the "bare-bones" question — is the statute unconstitutional for lack of due process procedures, where the statute itself prescribes the remedies leading to an evidentiary hearing upon denial of benefits by the deputy? What claimant is saying in effect is that benefits *must be paid* prior to *any* hearing on the matter. It would be difficult if not "impossible" to shorten the time for referee hearings under the statute without destroying due process notice procedures. The alternatives would be to have a prior evidentiary hearing on *every claim* filed (an administrative impossibility), or to give the claimant, automatically, so many weeks of "free benefits", not chargeable to the employers. The second alternative may be desirable (although certainly not to employers who supply the "fund"), but that is a matter for legislative, not judicial, action. Furthermore, such a procedure might validly be the subject of a due process attack by employers generally,

given the context, intent and purpose of unemployment compensation programs historically. In fact, such second alternative would doubtless soon destroy the segregated fund arrangement, (the true "insurance concept"), since general taxes might be required in taking care of such "free" weeks, especially during sudden or prolonged lay offs in the labor market.

In any event, affirmance of the lower court in the instant case, followed by similar reasoning applied to the Colorado case (Anderson), would put into focus the very problems pointed up by Justice Black in his dissent in *Goldberg* (at page 1024 and 1025.):

> "In other words, although some recepients might be on the list for payment wholly because of deliberate fraud on their part, the Court holds that the government is helpless and must continue, until after an evidentiary hearing, to pay money that it does not owe, never has owed, and never could owe. I do not believe there is any provision in our constitution that should thus paralyze the government's efforts to protect itself against making payments to people who are not entitled to them." • • •
>
> *In the next case, the welfare recepients are bound to argue that cutting off benefits before judicial review of the agency's decision is also a denial of due process.* • • • Thus the end result of this decision, may well be that the government, once it decides to give welfare benefits, cannot reverse that decision until the recepient has had the benefit of full administrative and judicial review, including of course, the opportunity to present the case to this court. Since this process

> will usually entail a delay of several years, the inevitable result of such a constitutionally imposed burden would be that the government will not put a claimant on the rolls initially, until it has made an exhaustive investigation to determine his eligibility." (emphasis added)

Justice Black is thus pointing out that the procedures advocated here and next upheld in the Anderson case as "logically following", which are not written into the statute, and which were not intended by either Congress or the state legislature, would cause the very evils which claimants should wish to correct — that is, that the double affirmation clause would essentially be wiped out, and the standard of "speed", bogged down by hearings in *every case*, would be lost forever. Thus, "when due" would become a mockery; "with all deliberate speed" might be substituted or, worse yet, the whole insurance feature of the program abandoned for payments out of general taxes established without any determinations as to causes for separation, i.e. "anyone out of work gets benefits for x weeks." This then becomes merely a substitute or "add-on" welfare program, and, as such, is rather useless, since the rationale for specific employer taxes is lost.

This Honorable Court may take judicial notice that Congress recently passed and the President signed *HR* 14705 which greatly broadens the coverage of unemployment compensation. Nowhere in the long debate and review of this new federal statute, or in the statute itself, is there any mention, concern or alteration of the procedures to be followed in administration of the payments of benefit claims. Thus the legislative intent must have been to leave the administrative procedures as they are.

If the Court is to "formalize" the procedures involved, it should do so only upon remand and jointure of the other class involved, the employers, whose rate of tax and financial burden will be *directly* and *adversely affected* by an affirmance.

CONCLUSION

If the state acts provide unconstitutional procedures which lack due process, the court should say so. If the procedures used in some instances are in violation of the statutory process, and thus lacking in due process under a constitutional statute, that also should be said clearly. Cloaking substantive changes in the enacted legislation under the phrase "when due" is to beg the question. If, as stated by the lower court, "when due" requires judicial definition because the congress did not further define it, the Court should not *restrict itself* in giving procedural guidlines in its definition. The stability and future effectiveness of unemployment insurance programs cannot withstand the onslaught of vagueness; their very viability depends on speedy payments of claims, while maintaining the integrity of the fund from fraudulent and disastrous diminution. The balance is *not* between the state and the claimant; it is between the claimant and the employer. If the fund established is to lose its integrity as a fund administered as fairly as possible by the state, then perhaps a whole new system (possibly taxing employees as well) should be instituted. If we are to allow payments in all cases (as in *Anderson*) by the mere process of a "*claimant filling out a claim form*", then the state, in administering the fund, may of necessity *have to be the "moving appellant."* Employers acquiesce in many cases, where perhaps they should not, for various reasons:

Inertia, lack of time to search and respond, a feeling of "guilt" for having to discharge or lay-off a person in a "bad" labor market; but primarily, it is submitted, because they believe the state agencies will properly and fairly administer the fund to prevent fraud or abuse. Employers are *interested parties,* have not been joined in this action, (the particular employer in the Colorado Anderson case *was* joined as required by our statute) and to decide "due process' without employers represented before the bar and as if the claimant and the state were the only "adversaries" is to bake only half a cake, not only leaving out a proper party, but actually denying the left-out party "due process" in turn.

It is respectfully urged that the District Court be reversed or the cause remanded for jointure of California employers as a class

Respectfully submitted,

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Appendix "A"

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Employment

Section 106. 82-2-1, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

82-2-1. Division of employment created — commissioner. There is hereby created a division of employment within the department of labor and employment, the head of which division shall be the commissioner of employment. Whenever any law of this state refers to the department of employment or to the executive director of employment, said law shall be construed as referring to the division of employment or to the commissioner of employment, as the case may be.

ARTICLE 5

Claims for Benefits

82-5-1. Filing Claims for Benefit.—Claim for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

82-5-2. Initial Determination. — (1) An individual designated by the division of employment, and hereinafter referred to as the deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall determine whether or not such claim is valid, and if valid, the earliest week with respect to which benefits may commence, if determinable, the weekly benefit amount payable and the maximum duration thereof.

(2) The deputy shall promptly notify the claimant and any other interested parties of the decision, including the earliest week with respect to which benefits may commence, the weekly benefit amount, and the maximum duration thereof, and the reasons for the decision. The deputy, for good cause, may reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within eleven calendar days after either the delivery of the deputy's notification, or after such notification was mailed to his last known address, whichever occurs first, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. A mailed notice shall be deemed served on the date of mailing. If an appeal is duly filed, the department shall give notice thereof to the parties entitled to notice of the original determination. Benefits with respect to the period prior to the final determination of the department shall be paid only after such determination. If a referee affirms a decision of the deputy, or the commission affirms a decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

82-5-3. Redeterminations. — (1) The department may reconsider a determination whenever it finds that an error in computation or identity has occured in connection therewith, or that wages of the claimant pertinent to such determination but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact. The commission shall prescribe by regulation for the establishing of time limits within which requests for redetermination may be allowed.

(2) Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 82-5-4.

(3) Subject to the same limitations and for the same reasons, the department may reconsider the determination in any case in which the final decision has been rendered by a referee, the commission or a court, and may apply to the referee, commission or court which rendered such final decision to issue a revised decision.

(4) In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

82-5-4. Appeals. — Unless an appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. Whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employer, the referee shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the department both of whom shall thenceforth be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such issue. The parties shall be duly notified of such referee's decision together with his reasons therefor, which shall be deemed to be the final decision of the department unless within eleven days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 82-5-6.

Appendix "B"

REGULATION NO. 7A

REGISTRATION FOR WORK AND FILING CLAIMS EXCEPT IN CASES OF PARTIAL UNEMPLOYMENT

(Revised January 14, 1963)

Pursuant to authority granted to the Commission by Section 82-4-7(2) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. To qualify for unemployment compensation benefits, an unemployed worker who lives within twenty miles of a public employment office or itinerant service point or representative thereof must register for work and file an initial claim for benefits with the nearest public employment office or itinerant service point or representative thereof, and thereafter, unless otherwise instructed, continue to apply for work and to file continued claims for benefits each week. The term "initial claim" as used in this regulation means a claim filed to establish a new benefit year or to begin a new claim series in a previously established benefit year.

B. The Department, for reasons found to constitute good cause, may permit an individual to report to another Colorado public employment office or itinerant service point or representative thereof for the purpose of filing continued claims for benefits.

C. The Department, for reasons found to constitute good cause for failure to report to the public employment office or itinerant service point or representative

thereof on the scheduled date, may accept a continued claim from any individual effective as of the first day of his week of total unemployment if such continued claim is filed within seven days of his regular reporting day.

D. Any person who by reason of his return to full time employment is unable to report to a local office or itinerant service point or representative thereof to file his continued claim as scheduled may file such claim by mail within seven days of his scheduled reporting day.

E. If in the judgment of the Department of Employment or the Industrial Commission of Colorado, acting as ex-officio Unemployment Compensation Commission of Colorado, it is found that such time limits as set forth above would be arbitrary or unreasonable because of compelling reasons or hardships which have prevented the filing within the period so provided by the regulation above, the Department or Commission may permit the acceptance of a claim subsequent to a period set forth by the above time limits, but not more than six months from the last day of the aforementioned time limits period.

All regulations or parts of regulations in conflict herewith are repealed.

Appendix "C"

82-1-3. Definitions. — As used in this chapter, unless the context clearly requires otherwise:

• • •

(12) "Interested party" to any benefit decision means the individual who is claiming benefits, the department, and any employer who has complied with the reporting requirements of the department with respect to wages or other information regarding such individual.

Appendix "D"

82-5-7. Procedure. — (1) The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commission for determining the rights of the parties whether or not such regulations conform to common law or statutory regulations of evidence and other technical rules of procedure.

(2) When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the tribunal having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party.

(3) No person shall participate on behalf of the department or the commission in any case in which he has a direct or indirect interest.

(4) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

REGULATION NO. 20

APPEALS ON DISPUTED CLAIMS

Pursuant to authority granted to the Commission by Section 82-5-7 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Appeals to Referees.

1. Procedure for Filing Appeals

   a. An appeal from a decision of the deputy shall be by written notice of appeal stating reasons therefor. Such notice shall be in any form which signifies an intent to appeal and shall be filed in the public employment office at which the disputed claim was filed or with the central office of the Division. The Division shall mail a copy of such notice to each party to the appeal.

   b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

2. Disqualification of a Referee.

   Challenges to the interest of a referee in an appeal scheduled to be heard by him shall be heard and decided by him or, in his discretion, referred to the Commission.

3. Hearing the Appeal.

   a. Hearings shall be conducted informally and in such manner as to ascertain the substantive rights of the parties. All relevant issues shall be considered and passed upon. Parties to the appeal

may present any pertinent evidence. The referee shall examine such parties and opposing parties may cross-examine each other and the others' witnesses. The referee, after notice to the parties, may hear such additional evidence as he deems necessary.

b. With the consent of the referee, parties to an appeal may stipulate to the facts in writing. The referee may decide the case on the facts so stipulated, or, in his discretion, set the appeal down for hearing and take such additional evidence as he deems necessary.

4. Adjournment of Hearings.

a. The referee may grant requests for adjournment when, in his own best judgment, such an adjournment will result in adducing all necessary evidence and be equitable to the parties.

b. In the event the party appealing the decision of the deputy fails to appear at the time and place scheduled for the hearing before the referee without good cause as determined by the Division and of which notice has been duly made, such non-appearance shall constitute a withdrawal of the appeal under the provisions of Section 82-5-4 of the Act, and the decision of the deputy shall become final.

5. Decisions by the Referee.

The referee shall announce, in written and signed form, his findings of fact, decision and reasons therefor as soon as practicable after a hearing and a copy thereof shall be mailed to all parties to the appeal.

B. Appeals to the Unemployment Compensation Commission of Colorado.

1. Procedure for Filing Appeals.

a. An appeal from a decision of a referee shall be by written notice of appeal stating reasons therefor. Such notice shall be in any form which signifies an intent to appeal and shall be filed in the public employment office at which the disputed claim was filed or with the central office of the Department. The Department shall mail copies of such notice to each party to the appeal.

b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

2. Hearing the Appeal.

a. The Commission may limit the parties to argument on the record or it may take or direct the taking of any additional evidence considered necessary to reach a decision.

b. When the Commission remands an appeal to the Division with a direction to take additional evidence, the referee shall follow the established procedure for hearing appeals and such evidence shall be returned to the Commission.

3. Hearing Appeals on Commission's Own Motion.

a. Within eleven days of a decision by a referee and in the absence of a notice of appeal by any of the parties, the Commission, on its own motion, may order the parties to appear before it for a hearing.

b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

c. The same procedure prescribed in this Regulation for conducting hearings before referees shall be followed by the Commission.

4. Hearing Pending Appeals on Cases Removed from Referee to Commission.

When the Commission removes a pending appeal to itself, the same procedures prescribed in this Regulation for notice to the parties and conducting hearings before a referee shall be followed by the Commission.

5. Decisions by the Commission.

a. Decisions shall be signed by those members of the Commission who hear an appeal and copies thereof mailed to all the parties.

b. The decision of the majority shall control; provided, however, that a dissent stating reasons therefor may be filed by the minority.

6. Disqualification of Commissioner.

Challenges to the interest of a Commissioner shall be heard and decided by the Commission.

C. General Provisions.

1. The Division may, after notice to the parties, request an agency which administers the Employment Security Act for another state to take evidence in that state for use by the Division. Such agency, after

notice to the parties, may follow the procedure prescribed by the law and regulations of that state for conducting hearings.

2. Subpoenas.

a. The Department shall issue subpoenas to compel attendance of witnesses and production of records for a hearing before a referee or the Commission only upon a showing of a necessity therefor.

b. A subpoenaed witness shall be paid fees according to the following schedule:

Witness fee ..... Two Dollars per day
Mileage fee ..... seven and one-half cents per mile

3. Representation at Hearing.

a. In a proceeding before a referee or the Commission an individual may appear for himself; a partnership may be represented by any partner or a duly authorized representative; and a corporation or association may be represented by an officer or duly authorized representative.

b. Any party may designate another person to represent him as counsel in an appeal proceeding before the Division or Commission; provided, however, that any person, other than an attorney-at-law, duly admitted to the practice of law in any state or a territory of the United States, shall not charge or receive any fee for representing such party.

c. The Commission may refuse to permit any person to represent others in a proceeding before it or the Division who it finds is guilty of unethical

conduct or who intentionally and repeatedly fails to comply with the Act, its regulations, or with instructions of said Commission.

4. Preserving Records of Decisions.

Copies of all decisions of referees and the Commission shall be kept in the main administrative office of the Division in Denver, Colorado. Copies of such decisions may be obtained upon written request therefor; provided, however, that copies so released to other than parties to the appeal proceeding shall in no manner reveal the names of the parties or witnesses therein.

5. Reopening Hearing in Case of Non-appearance.

An interested party not present at a hearing before a referee or the Commission may request such referee or the Commission, as the case may be, to reopen the hearing. Such request must be made in writing within 10 days from the date the original hearing was held, and no hearing shall be reopened unless the requesting party establishes to the satisfaction of the referee or the Commission, as the case may be, that there was good and sufficient cause for his failure to appear at the said hearing.

All regulations or parts thereof in conflict herewith are repealed.